BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of New Rules I through XIII, the amendment of ARM 37.86.2207, 37.86.2219, and 37.86.2221, and the repeal of ARM 37.88.1101 through 37.88.1137 pertaining to Medicaid and MHSP reimbursement for youth mental health services	))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On July 31, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-448 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1536 of the 2008 Montana Administrative Register, Issue Number 14.

2. The department has adopted New Rule I (37.87.1201), Rule II (37.87.1202), Rule IV (37.87.1225), Rule V (37.87.1216), and Rule VI (37.87.1203) as proposed. The department has amended ARM 37.86.2219 and 37.86.2221 and repealed ARM 37.88.1101 through 37.88.1137 as proposed.

3. The department has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

RULE III (37.87.1206) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, PARTICIPATION REQUIREMENTS (1) remains as proposed.

(2) PRTF providers, as a condition of participation in the Montana Medicaid program, must comply with the following requirements:

(a) through (d) remain as proposed.

(e) accept, as payment in full for all operating and property costs, the amounts paid in accordance with the reimbursement method set forth in ~~these rules~~ this rule and ARM 37.87.1201, 37.87.1202, 37.87.1203, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, and 37.87.1224;

(f) through (j) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

RULE VII (37.87.1217) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, TREATMENT REQUIREMENTS (1) and (2) remain as proposed.

(3) The PRTF plan of care must be comprehensive and address all psychiatric, medical, psychological, social, behavioral, developmental, and chemical dependency treatment needs.

(4) remains as proposed.

(5) ~~PRTF services include, at a minimum, a seven day supply of medication and a prescription for, at a minimum, a 30 day supply of medication on discharge from the facility.~~ PRTF services include, at a minimum, discharge planning to ensure the youth has medication or a prescription for medication to last through the first outpatient visit in the community with a prescribing provider. Prior to discharge, the PRTF must identify a prescribing provider in the community and schedule an outpatient visit. Documentation of the medication plan and arrangements for the outpatient visit must be included in the youth's medical record. If medication has been used during the youth's PRTF treatment but is not needed upon discharge, the reason the medication is being discontinued must be documented in the youth's medical record.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

RULE VIII (37.87.1207) HOSPITAL-BASED PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, REQUIREMENTS (1) A hospital-based PRTF must ~~be paid as specified in ARM 37.86.2904, 37.86.2905, 37.86.2907, 37.86.2910, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2925, 37.86.2928, 37.86.2931, 37.86.2935, and 37.86.2940. It must also~~ meet the following requirements:

(a) through (f) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

RULE IX (37.87.1222) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, INTERIM RATE AND COST SETTLEMENT PROCESS

(1) through (1)(c) remain as proposed.

(2) The ancillary rate in (1)(c) will be adjusted retrospectively when:

(a) remains as proposed.

(b) ancillary costs in the facility-specific aggregate for all discharges, for Montana Medicaid paid youth, in a state fiscal year exceed or are less than 5% of the reimbursement that the facility received as an interim rate. If the costs exceed the aggregate by more than 5%:

(i) through (iii) remain as proposed.

(3) The psychiatric service rate is an all-inclusive bundled per diem rate, and includes:

(a) and (b) remain as proposed.

(c) lab and pharmacy costs ~~related to the youth's psychiatric condition~~ with the exception noted in (4)(r) pharmacy for post-discharge medication.

(4) Ancillary services are provided by or include the following:

(a) through (m) remain as proposed.

(n) MRI, or other diagnostic services;

(n) through (p) remain as proposed but are renumbered (o) through (q).

(r) pharmacy for post-discharge medication;

(q) through (v) remain as proposed but are renumbered (s) through (x).

~~(w)~~ (y) targeted case management; and

~~(x) at a minimum, a seven day supply of medication on discharge; and~~

~~(y)~~ (z) any other Medicaid service provided to the youth receiving PRTF in-patient care not related to the youth's psychiatric condition may be considered an ancillary service.

(5) If a youth receiving in-patient care in a PRTF has ~~a~~ an unusually expensive medical condition that requires a higher ancillary rate, prior to the cost settlement process, the PRTF may request interim reimbursement for the ancillary care. The department at its discretion may grant the youth specific request if the PRTF:

(a) remains as proposed.

(b) interim payments must be requested ~~in the quarter of the state fiscal year in which the expense was incurred~~ within 90 days of the date of service and will be taken into consideration during the ancillary cost settlement process described in (2). Payment of these claims will be made by the department within 90 days from the date all requirements for payment are met.

(6) through (9) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

RULE X (37.87.1223) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, REIMBURSEMENT (1) For PRTF services provided on or after ~~October 1, 2008~~ January 1, 2009, the Montana Medicaid program will pay a provider for each patient day as provided in these rules.

(a) through (3)(b) remain as proposed.

(4) Out-of-state PRTF providers who are not hospital based will be reimbursed 50% of their usual and customary charges. Reimbursement will include all Medicaid covered psychiatric, medical, and ancillary~~, and chemical dependency~~ services. Medical services are included as ancillary services. Ancillary services are defined in ARM 37.87.1222.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

RULE XI (37.87.1224) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, CONTINUITY OF CARE PAYMENT (1) Hospital-based psychiatric residential treatment facilities as defined in ~~[RULE VIII]~~ ARM 37.87.1207 qualify for a continuity of care payment.

(a) through (2) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

RULE XII (37.87.1214) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, CHEMICAL DEPENDENCY ASSESSMENT AND TREATMENT (1) PRTF services may include chemical dependency (CD) assessment and treatment according to the American Society of Addictions Medicine PPC-2R Manual (Second Edition, Revised April 2001) for youth with a primary SED diagnosis who have a co-occurring CD diagnosis.

(2) through (4) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

RULE XIII (37.87.1215) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, ASSESSMENT SERVICES (1) PRTF assessment services are provided by in-state facilities and must comply with the requirements of this subchapter and the applicable federal regulations for PRTF services.

(2) through (6) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

4. The department has amended the following rule as proposed with the following changes from the original proposal, new matter underlined, deleted matter interlined.

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) through (4)(b) remain as proposed.

(5) Each provider of therapeutic youth group home services will report allowable costs for SFY 2008 that starts July 1, 2007 using auditable data, standardized forms, instructions, definitions, and timelines supplied by the department.

(a) remains as proposed.

(b) Reports of allowable costs for SFY 2008 must be received by the department before ~~October 1~~ October 20, 2008.

(6) through (11) remain as proposed.

(12) The department will not reimburse providers for two services that duplicate one another on the same day. The department adopts and incorporates by reference the Medicaid Mental Health Plan and Mental Health Services Plan for ~~y~~Youth Services Excluded from Simultaneous Reimbursement ~~dated October 1, 2008~~ effective January 1, 2009. A copy of the Services Excluded from Simultaneous Reimbursement is posted on the internet at the department's web site at www.dphhs.mt.gov/mentalhealth/children/childrensmentalhealthservicesmatrix.pdf or may be obtained by writing the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(13) remains as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: What is the effective date of the rule changes?

RESPONSE #1: The repeal of ARM 37.88.1101 through 37.88.1137 and adoption of Rules I through XIII (37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225) will be effective January 1, 2009, rather than October 1, 2008 as proposed. Work on the automated claims payment system at the Medicaid fiscal intermediary will not be completed before that date.

The amendment to ARM 37.86.2207(5)(b) will be applied retroactively, effective October 20, 2008, rather than October 1, 2008 as proposed, regarding the cost report due date for therapeutic youth group homes.

The effective date of the new "Medicaid Mental Health Plan and Mental Health Services Plan for Youth Services Excluded from Simultaneous Reimbursement" in ARM 37.86.2207(12) will be January 1, 2009, rather than October 1, 2008 as proposed. Clinical management guidelines for community-based psychiatric rehabilitation and support services when prior authorized with day treatment and partial hospital services will not be developed and published until then.

The proposed change on the chart for prior authorization for outpatient therapy services provided on the same day as therapeutic youth group home services will be removed. The department will reconsider the rules for prior authorization of outpatient therapy services provided on the same day as therapeutic youth group home services when the therapeutic youth group home rules are updated.

Amendments to ARM 37.86.2207, except as otherwise stated in this notice, will be effective January 1, 2009. The amendments ARM 37.86.2219 and 37.86.2221 will be effective January 1, 2009. As of that date, the signature of an intensive case manager will no longer be required on the certificate of need for therapeutic youth group home and therapeutic family care services.

COMMENT #2: In Rule II(6) (37.87.1202) "other than a hospital" would be added to the definition of a psychiatric residential treatment facility (PRTF). Some psychiatric residential treatment facilities are also licensed as hospitals. This language could make the hospital-based psychiatric residential treatment facilities ineligible for a continuity of care payment, as provided for in Rule XI (37.87.1224). We recommend the department delete "other than a hospital" from the definition.

RESPONSE #2: The department disagrees. The proposed language parallels federal regulations describing a PRTF. The department will not pay hospital or psychiatric hospital distinct part units under these PRTF rules. The department notes that the commentor's facility is also licensed as a PRTF and maintains separate beds for PRTF residents. That part of the facility will be paid as a PRTF and will be eligible to receive a continuity of care payment.

COMMENT #3: Rule III(2)(e) (37.87.1206) is not clear as to the reimbursement method applicable to PRTF providers. We recommend the phrase: "pursuant to the methodology set forth in Rule IX (37.87.1222)" be substituted for: "in accordance with the reimbursement method set forth in these rules".

RESPONSE #3: Other rules in addition to Rule IX (37.87.1222) address reimbursement methods for PRTF providers. Therefore, Rule III(2)(e) (37.87.1206) has been clarified to read "accept, as payment in full for all operating and property costs, the amounts paid in accordance with the reimbursement methods set forth in Rules I through XIII (37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225)".

COMMENT #4: Are the "social behavioral" needs listed in Rule VII(3) (37.87.1217) one category or two?

RESPONSE #4: Social and behavioral needs are separate categories. Rule VII(3) (37.87.1217) was clarified by inserting a comma between "social" and "behavioral".

COMMENT #5: Rule VII(5) (37.87.1217) would require, at a minimum, a seven day supply of medication and a prescription for a 30-day supply on discharge. What if post-discharge medication is not medically necessary, as determined by the treating physician or advanced practice registered nurse?

RESPONSE #5: The department believes if medication is an important component in the treatment of a youth's condition in a PRTF, it is important on discharge and should be addressed in discharge planning. The time it takes to schedule an appointment with a prescribing professional in the community varies from community to community. The intent of the proposed rule was for a youth discharged from a PRTF to have enough medication or a prescription for treatment of their condition until they are able to have an appointment with a community prescribing provider. Rule VII(5) (37.87.1217) was changed to read: "PRTF services include, at a minimum, discharge planning to ensure the youth has medication or a prescription for medication until the first community outpatient visit with a prescribing provider. Prior to discharge, the PRTF must identify a prescribing provider in the community and schedule an out-patient visit. Documentation of the discharge medication plan and arrangements for the outpatient visit must be documented in the youth's medical record. If medication has been used during the youth's PRTF treatment but is not needed upon discharge, the reason the medication is being discontinued must be documented in the youth's medical record."

The pharmacy costs for medication provided to the youth for post discharge use is considered an ancillary expense in Rule IX(4)(r) (37.87.1222). The language and number will be changed to read: "(4)(r) pharmacy for post-discharge medication;".

COMMENT #6: The terms "interim rate", "bundled rate", "and ancillary services" are somewhat confusing as to what the department intends. Please clarify.

RESPONSE #6: The term "interim rate" as used in Rule IX(1) (37.87.1222) is comprised of (a) the psychiatric service rate which is found on the fee schedule, this rate is currently $303.76, plus (b) the direct care wage, plus (c) the facility-specific ancillary add-on rate. A portion of this interim rate, the facility-specific add-on rate referenced in (c), is subject to cost settlement. The term "bundled rate" provided for in Rule IX(3) (37.87.1222) is the psychiatric service rate. Services included in the psychiatric service rate are listed in Rule IX(3) (37.87.1222). The ancillary service rate is a component of the interim rate. Ancillary services are listed in Rule IX(4) (37.87.1222).

COMMENT #7: The out-of-state PRTFs should have to submit the same cost reports as the in-state PRTFs and be reimbursed their actual operating expenses. The methodology the department uses is unfair to in-state providers.

RESPONSE #7: The department disagrees. Out-of-state PRTFs will not be eligible for cost settlement of their ancillary expenses like in-state PRTFs. Out-of-state PRTFs will be reimbursed 50% of their usual and customary charges for psychiatric, medical, and ancillary services. Reimbursement outside their bundled rate will not be available to them. The department has determined this is a fair reimbursement methodology. Montana Medicaid uses out-of-state PRTFs only when a youth cannot be served by an in-state PRTF. The department's goal is to treat youth needing PRTF services in Montana whenever possible.

COMMENT #8: We recommend that the department amend Rule IX (37.87.1222) to set the cost settlement period as October 1, 2008 through June 30, 2009. An adjusted rate should then be set, based on the cost reports of each facility. The PRTF providers are concerned about the possible impact of cost settlement on the Medicaid budget.

RESPONSE #8: The department partially agrees. Under the final rule, the department will begin paying a per diem PRTF rate plus a facility specific ancillary rate starting January 1, 2009. Ancillary expenses will be cost-settled at the end of each state fiscal year ending June 30. A new facility-specific rate will be set based on the results of a cost settlement process.

If the recommendation is to add a specific time to complete the cost settlement procedure, the department disagrees. The time it takes to complete the cost settlement is highly dependant on the quality of the data submitted by each facility. The department will work with the facilities prior to the submission of cost data.

The department thanks the providers for their concern about the Medicaid budget. Cost settlement will be made at the cost-sharing rate in effect for all Medicaid services. Financial reports based on paid claims for ancillary and medical expenses are the best way to predict the facility-specific add-on rate referenced in Rule IX(1)(c) (37.87.1222). PRTFs can assist the department by negotiating the lowest possible rate from providers of medical and ancillary services.

COMMENT #9: The department should include the direct care wage adjustment to the base rate provided for in Rule IX(1)(b) (37.87.1222).

RESPONSE #9: The department has not determined how to include the direct care wage in the PRTF base rate. The department is considering alternatives, such as including the direct care wage in the facility-specific add-on ancillary rate since some in-state PRTFs treat more Montana Medicaid youth than others. The PRTF direct care wage will be addressed in future rules.

COMMENT #10: We are concerned about the fiscal reports provided several months ago for ancillary and medical claims paid in federal fiscal year (FFY) 2007, while Medicaid youth were in our PRTF facility. The reports do not accurately reflect billed ancillary charges and we encourage the department to use more current data and consider our usual and customary service fee. We recommend the department complete a new study of physician salaries and incorporate the results into the rate.

RESPONSE #10: The department believes FFY 2007 financial reports are valid. Current data may be less accurate because of national provider identifier (NPI) implementation problems. The department agrees the financial reports do not reflect billed versus paid claim amounts. If a provider's ancillary expenses are more than 105% above the facility's expenses previously reported, the department will reimburse the provider their actual expenses. Physician expenses are considered "ancillary" under Rule IX(4) (37.87.1222). Physician expenses will be included in the cost report the department receives for cost settlement purposes under that rule.

COMMENT #11: In FFY 2007, one PRTF was owned by another company and had a moratorium placed on its admissions. The number of youth in the facility at the time will adversely impact their current reimbursement rate. How will the department take such circumstances into consideration?

RESPONSE #11: If the aggregate ancillary costs for this PRTF for FFY 2007 was, for example, $10,000, the department will divide that amount by the number of Medicaid bed days billed for that period to determine the facility-specific add-on rate. If the bed days were, for example, 1,000, the daily facility-specific add-on rate would be $10 a bed day. In FFY 2008, if the aggregate ancillary costs for the facility were $5,000, for example, and the Medicaid bed days were less than in FFY 2007 because of fewer youth in the facility, for example 500, the FFY 2009 facility-specific add-on rate would still be $10 a bed day. The department is computing the PRTF rates assuming there will be a direct correlation between the lower number of

Medicaid youth served and ancillary costs in FFY 2007. Applied to SFY 2009 expenses, if the facility exceeds 105% of the aggregate ancillary costs for FFY 2007 the department will reimburse the facility up to actual costs.

COMMENT #12: Rule IX(2)(b) (37.87.1222) states the department will reimburse the facility for costs that exceed 105% of the aggregate. Will the department reimburse the provider for each dollar over 105%?

RESPONSE #12: The department will reimburse a provider dollar for dollar over 105% of the aggregate ancillary expenses. Providers will reimburse the department dollar for dollar under 95% of the aggregate.

COMMENT #13: Does the ancillary rate include staff assigned to escort a youth to an emergency room and other federally allowable costs?

RESPONSE #13: It is not clear what is meant by other federally allowable costs. Outpatient hospital claims for emergency room services are paid to the hospital and do not include PRTF staff. Billing separately for PRTF staff who escort a PRTF youth to the emergency room is not allowed and is included in the PRTF bundled psychiatric reimbursement rate in Rule IX(1)(a) (37.87.1222).

COMMENT #14: Does the ancillary rate include case management?

RESPONSE #14: A moratorium has been placed on the CMS regulation that would limit the amount of Targeted Case Management Services (TCM) a youth may receive while in a PRTF. At the same time, CMS is requiring states to bundle the reimbursement rate for all services a youth receives while in a PRTF. The department has requested clarification from CMS on this question but has not received a response. TCM is currently included in the list of ancillary services. In-state PRTFs will be paid the facility-specific ancillary rate based on our review of the regulations. Out-of-state PRTFs will be paid 50% of their usual and customary rate including TCM services as outlined in Rule X(4) (37.87.1223).

COMMENT #15: It is our understanding the "cost per bed day for RTC (residential treatment center) only" reflects the current rate approved by the Legislature, $303.76, and will be the base rate from which an add-on rate will begin. What will be the starting rate October 1, 2008?

RESPONSE #15: The "psychiatric service" or base rate provided in the department's Medicaid Mental Health Fee Schedule per Rule IX(1)(a) (37.87.1222) is $303.76. The facility-specific add-on ancillary rate in Rule IX(1)(c) (37.87.1222) will be added to the $303.76 rate.

The repeal of ARM 37.88.1101 through 37.88.1137 and adoption of Rules I through XIII (37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and

37.87.1225) will be effective January 1, 2009, rather than October 1, 2008 as originally proposed. For more information, please see the response to comment #1.

COMMENT #16: When physician and psychiatrist services are considered ancillary services (see Rule IX(4) (37.87.1222)), what cost should be charged - the physician or psychiatrist's salary, the Medicaid reimbursement rate, or their usual and customary charges?

RESPONSE #16: PRTF-based physicians will be cost-settled to the amount they would have received from Medicaid under the Reimbursement and Modifier Requirements in ARM 37.86.105 and the RBRVS Reimbursement in ARM 37.85.212. "PRTF-based" means a physician or psychiatrist employed by or under contract with the PRTF. Non-PRTF-based physicians will be cost-settled to the actual allowable cost of the purchased service.

COMMENT #17: We understand ancillary charges must be billed in the quarter in which costs were incurred. We recommend changing Rule IX(5)(b) (37.87.1222) to "within 90 days of the date of service". As proposed, interim payments must be requested "in the quarter of the state fiscal year" in which expenses are incurred. Some expenses may be incurred at the end of a fiscal quarter and may be difficult to interim bill for in the same quarter.

RESPONSE #17: The department agrees with the proposed language and has changed Rule IX (37.87.1222) accordingly. Please note however, most ancillary expenses will be covered in the facility-specific add-on rate in Rule (IX)(1)(c) (37.87.1222). Rule IX(5) (37.87.1222) allows providers treating a youth with a medical condition that requires a higher ancillary rate to request an interim payment prior to the cost settlement process, at the department's discretion. The interim payment process will be used for unusually expensive youth.

COMMENT #18: Rule IX(9) (37.87.1222) should specify who the "designee" for receiving notice of discharge is. The $100 fine for not sending timely notification of discharges is excessive.

RESPONSE #18: The department will develop a PRTF discharge notification process that will specify who the designee is. The department does not believe this process needs to be in rule. The rule indicates a $100 fine may be imposed if providers do not notify the department of discharges timely. The department notes discharge notifications have consistently not been received. The fine should give providers an incentive to give timely notification. This notification is critical for youth to receive needed services upon discharge. The rule and fine remain as proposed.

COMMENT #19: Requiring chemical dependency services be provided by a licensed addiction counselor (LAC) may place a burden on the PRTFs as such professionals are hard to recruit and retain. The cost needs to be added to the base rate.

RESPONSE #19: The department believes chemical dependency services are important in this level of care for youth with a co-occurring chemical dependency diagnosis. The department has revised Rule XII (37.87.1214) to make chemical dependency services optional. LAC services are defined as ancillary in Rule IX(4) (37.87.1222) and may be cost-settled at the end of the state fiscal year.

COMMENT #20: In Rule XIII(2)(b) (37.87.1215) we recommend 14 days be changed to 30 days. Fourteen days is not long enough to complete the testing needed to determine the impact of a medication adjustment.

RESPONSE #20: The department disagrees. If the stay extends beyond 14 days the regular PRTF rate will apply.

COMMENT #21: We recommend the department remove (5)(a) of Rule XIII (37.87.1215) entirely. Providers cannot assure youth who receive assessment services are not going to require additional treatment soon after discharge.

RESPONSE #21: In adding short term assessment services to the PRTF rule, the department acknowledges some youth need to be reassessed for a number of reasons. If a youth is readmitted within 30 days to a PRTF, the department may review and should be allowed to recover the 15% higher reimbursement rate for the assessment services. Assessment services are already a requirement for youth admitted to a PRTF, with the exception of Rule XIII(3)(d) (37.87.1215) for a chemical dependency assessment. The short term nature of the admission may not allow the PRTF to recoup expenses during a short stay. The department acknowledges many factors may contribute to a readmission to a PRTF within 30 days of receiving assessment services. Rule XIII (37.87.1215) uses permissive language, "may" with regard to recovering the higher assessment service rate versus the regular PRTF reimbursement rate.

COMMENT #22: We believe structural errors were made in separating residential treatment facility and in-patient psychiatric hospital rules. Both are considered in-patient psychiatric services in the repeal of ARM 37.88.1101 through 37.88.1137 and the adoption of new Rules I through XIII (37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225). In particular, ARM 37.88.1102(5) and (6), 37.88.1105(2)(g), 37.88.1119, 37.88.1121(1), and 37.88.1125, and would endanger continuity of care payments for hospital-based residential treatment facilities.

RESPONSE #22: The department's intent in repealing ARM 37.88.1101 through 37.88.1137 and the adoption of new Rules I through XIII (37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225) is to move the residential treatment facility or PRTF rules to a new children's mental health ARM chapter and separate the psychiatric hospital rules from the PRTF rules so providers and recipients can find them more easily. The intent was not to repeal the continuity

of care payment for hospitals or hospital-based PRTFs. The department does not believe these changes affect the continuity of care payment.

COMMENT #23: ARM 37.86.2801(3)(a) does not apply to freestanding psychiatric hospitals for persons under age 21.

Repealing ARM 37.88.1102(5) and (6) would eliminate the definition of an in-patient hospital psychiatric facility, its devotion to the provision of care to persons under the age of 21, and the requirement that it be licensed as a hospital.

RESPONSE #23: The adoption of MAR Notice No. 37-445 on in-patient hospital rules published by the Secretary of State on September 11, 2008, issue number 17, page 1983, added "acute care psychiatric hospital" in ARM 37.86.2801(3)(a) to the list of hospitals that may provide in-patient psychiatric services.

It also added the definition of acute care psychiatric hospital to ARM 37.86.2901(1) which "means a psychiatric facility accredited by the Joint Commission on Accreditation of Health Care Organizations that is devoted to the provision of in-patient psychiatric care for persons under the age of 21. . . ".

COMMENT #24: Repealing ARM 37.88.1105(2)(g) would eliminate psychiatric hospital requirements in 42 CFR 482.1 through 482.62, section 1861(f) of the Social Security Act, and accreditation standards recognized by the U.S. Department of Health and Human Services.

RESPONSE #24: The department agrees in part. The adoption of MAR Notice No. 37-445 on in-patient hospital rules published by the Secretary of State on September 11, 2008, issue number 17, page 1983, added ARM 37.86.2902(7): "Acute care psychiatric hospitals must comply with 42 CFR 440.160, 42 CFR 441 subpart D, and the applicable portions of 42 CFR 482." The federal regulations implement the Social Security Act and contain specific psychiatric hospital requirements. The department believes referencing the Act separately is not necessary.

COMMENT #25: Repealing ARM 37.88.1119 would eliminate the psychiatric hospital requirements to keep the stay brief and to discharge the youth to the least restrictive setting at the earliest possible time and to require the psychiatric condition pose a significant danger to self, others, or the public.

RESPONSE #25: The department disagrees and believes these requirements are addressed elsewhere in state and federal regulations. The adoption of MAR Notice No. 37-445 on in-patient hospital rules published by the Secretary of State on September 11, 2008, issue number 17, page 1983, added ARM 37.86.2902(7) that incorporated 42 CFR 441.154, which defines active treatment as achieving the recipient's discharge from in-patient status at the earliest possible time. ARM 37.82.102(18) defines a "medically necessary service" as services being provided in the least expensive level of care to treat the individual's condition. Danger to self or

others is addressed in the First Health Manual regarding the clinical management guidelines for hospital level of care.

COMMENT #26: Repealing ARM 37.88.1125 would eliminate psychiatric hospital reimbursement for a DRG perspective payment system, capital-related costs, cost or day outliers, catastrophic case payments, disproportionate share payments, adjustor payments, and excludes the payment of a DRG rate and medical education costs, certified nurse anesthetist costs, and other costs.

RESPONSE #26: The requirements in ARM 37.88.1125 are covered in ARM 37.86.2801, "All Hospital Reimbursement, General". In-patient psychiatric hospital rule provisions previously in ARM 37.88.1125 are covered as an "acute care psychiatric hospital" in ARM 37.86.2801(3)(a) as amended in MAR Notice No. 37-445, published by the Secretary of State on September 11, 2008, issue number 17, page 1983.

The other reimbursement requirements from ARM 37.88.1125 are covered in ARM 37.86.2905, General Reimbursement; ARM 37.86.2907, DRG Payment Rate Determination; ARM 37.86.2910, Qualified Rate Adjustment Payment; ARM 37.86.2912, Capital-related Costs; ARM 37.86.2914, Medical Education Costs; ARM 37.86.2916, Cost-outliers; ARM 37.86.2918, Readmissions and Transfers; ARM 37.86.2920, Hospital Residents; ARM 37.86.2925, Disproportionate Share Hospital (DSH) Payments; and ARM 37.86.2928, Hospital Reimbursement Adjustor.

COMMENT #27: In paragraph 6, on page 1549, of published proposed MAR Notice No. 37-448, the department states the definition of in-patient psychiatric acute hospital is found in ARM 37.86.2901 and the reimbursement requirements are found in ARM 37.86.2801 and 37.86.2905. ARM 37.86.2901(15)(d) references the ARMs in Title 37, chapter 88, subchapter 11 that are being repealed in this notice.

RESPONSE #27: The department agrees; this was an oversight. Rule 37.86.2901(15)(d) in adoption notice MAR Notice No. 37-445 published by the Secretary of State on September 11, 2008, issue number 17 at page 1983 was renumbered (19)(d). This rule makes a distinction between an in-patient hospital and a PRTF. ARM 37.86.2901(19)(d) is referring to in-patient psychiatric hospital services and should reference Title 37, chapter 86, subchapters 28 and 29. This change will be made. The department will correct the reference in a future rule amendment.

COMMENT #28: Rule VIII(1) (37.87.1207) regarding the reimbursement for hospital-based psychiatric residential treatment facilities does not fit in this rule. Hospital-based PRTFs are paid in the same manner as a nonhospital-based PRTF. Thus, referencing the in-patient hospital reimbursement rule is not appropriate.

RESPONSE #28: The department agrees and has deleted the proposed language in Rule VIII(1) (37.87.1207) that pertains specifically to these facilities. The rest of Rule VIII(1) and its subsection remain as proposed.

COMMENT #29: Rule IX(2)(b) (37.87.1222) is somewhat confusing. Can the aggregate of ancillary costs be determined on all facilities versus one specific facility?

RESPONSE #29: The intent is to make the aggregate and ancillary costs facility-specific. The department added "facility-specific" and "for Montana Medicaid paid youth" to Rule IX(2)(b) (37.87.1222) for clarity.

COMMENT #30: The rationale for Rule IX(3)(c) (37.87.1222) regarding lab and pharmacy services for treatment of the youth's psychiatric condition states they are bundled in the psychiatric service rate. Is the department's intent to move lab and pharmacy to the list of ancillary services?

RESPONSE #30: Lab and pharmacy have traditionally been covered under the daily per diem rate. The rule rationale incorrectly identified some of these as ancillary costs, although the rule itself did not list lab and pharmacy as ancillary costs. Lab costs are included in the list of services that make up the psychiatric service rate in Rule IX(3) (37.87.1222). Pharmacy will not be considered ancillary except medication supplied for post-discharge use in Rule IX(4) (37.87.1222).

COMMENT #31: Are diagnostic fees included in the bundled rate for PRTF services?

RESPONSE #31: The specific intent of the question is unclear. Diagnostic services provided by a psychiatrist for completing psychiatric evaluations are considered physician services under the definition of ancillary services listed in Rule IX(4) (37.87.1222). "Diagnostic services such as an MRI" to rule out medical versus psychiatric conditions will be considered a medical service and will be added to the list of ancillary services in Rule IX(4) (37.87.1222). Evaluations completed by social workers, counselors, and psychologists are part of the bundled psychiatric service rate in Rule IX(3) (37.87.1222).

COMMENT #32: We thought after providers met with department staff in April 2008 there was consensus to do a cost study for PRTFs. Providers also thought a cost study is a federal mandate under CFR Title 42, part 441, subpart d (2008).

RESPONSE #32: Providers volunteered to submit cost reports to the department in preliminary meetings about the proposed rule changes. The department did not propose cost settling the base or bundled psychiatric service rate. The CFR referenced does not mandate a cost report or cost settlement process, but the department believes it is the most equitable method of reimbursement.

COMMENT #33: We are concerned about recipients who present with the need for medical treatment while on a leave of absence from our PRTF. How will other providers perceive the payment source as a nonpresent entity? This could create a hardship for families and potentially jeopardize necessary care.

RESPONSE #33: The department and PRTFs will need to inform families and other providers about the PRTF bundled rate and that the PRTF is responsible for payment of any services a youth receives while in a PRTF, or on a therapeutic home visit. If the youth is discharged from a PRTF, the provider of ancillary services can bill Medicaid directly. A notice will be posted to this effect on the Medicaid web site at www.mtmedicaid.org prior to January 1, 2009 when the rules become effective. If providers have questions about this requirement, they may contact the PRTF Clinical Program Manager, Diane White, at the Children's Mental Health Bureau, (406) 444-1535. PRTF providers may consider sending instructions with the youth on how to bill the PRTF for services they receive while are on a therapeutic home visit.

6. Rules I through XIII (37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1225, and 37.87.1224), ARM 37.86.2207, 37.86.2219, and 37.86.2221, will be effective January 1, 2009 rather than October 1, 2008 as proposed. The amendment to ARM 37.86.2207(5)(b) will be applied retroactively to October 20, 2008 rather than October 1, 2008 as proposed. All other amendments to ARM 37.86.2207 will be effective January 1, 2009. There will be no harmful effects resulting from the retroactive application.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State October 27, 2008.